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### **The state and press freedom in Nigeria: concepts, precepts, and prospects**

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#### **Abstract**

The mass media is seen as an integral part of state machinery. In fact the power of the media is equated to the three arms of government- the Executive, Legislature and Judiciary. But much as this trio enjoys relative independence and freedom, the media, in view of its arrogated role as the Fourth Estate of the society does not. Professionally and scholarly, media freedom in Nigeria has remained a discourse in antiquity. The fight for the freedom of the press is said to be as old as the history of the press and the Nigerian nation state itself. This paper takes a critical look at the relationship between the media and the workings of state power with a view to analyze issues, trends, and challenges as well as recommend better ways of institutionalizing press freedom as a sine qua non condition for press operation in Nigeria.

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**Key Words:** 1. State 2. Press Freedom 3. FOIA 4. Mass Media 5. Repression

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## Introduction

The important role the press plays in the society is universally acknowledged and therefore not an issue of debate. Scholars seem to agree that the media does have a place in the body politics of every nation. Also, not in doubt is the fact that the media have powers (Katz, 2001; Wimmer & Dominick, 2009) and can therefore exert considerable influence on those exposed to it. This can include the machinery of the state and the audience alike. The nature of the influence, can either be positive, negative or both. Notwithstanding, studies have shown that the nature of media influence on the society is dependent on a lot of factors which embraces media access, media reach, and media use (Zillmann & Bryant, 1994) which in turn operates based on the principles of selective exposure, attention, perception and retention.

For conceptual clarification, the press and mass media are the same and are therefore used interchangeably in this discourse. The debate on the freedom of the press over the years, contrary to expectations is not because of its expediency or not to the society, but, is based on power tussles over who should own 'the word' and who should have the use of it. There are vested power claimants in every society. These arguably are the people, the state and the press (Annie, 2020; Sabine, 1920; Jessop, 2009). In a democracy it is assumed that power belongs to the people. However, under arbitrary rules power is in a state of flux and therefore can be manipulated by any person who holds the whims of state power. Power does not in the real sense of it belong to the people. Aturu (2010) argues thus:

For me, I conceive of law as no more than the domination of an inferior class by a superior class in a given society. That the superior class also controls the economic power in such a society is an inescapable conclusion supported by a cursory study of the history of all legal systems, advanced and primitive...The dominating class cannot make its law to serve the interest of the dominated. Put differently, it is wishful thinking to expect the dominating class to make laws that would confer benefits on the dominated except to the extent that the collateral benefits and law are to keep the oil of domination functioning and effective.

It can be concluded based on Aturu's position that "the people own the powers but the state has the use of it. The state and its agents are to this extent the real owners of power, no doubt. The press, in view of the powers it assumes serves a middle cause between the owners of power and those who have the use of it seeking to bridge the gulf that exist between them.

Also to be noted is that, whether the press should operate freely has never been an issue of debate, but, whose cause it should champion? In line with the development media principles, there is a feeling in government circles that the Nigerian press should be an extension of the government and therefore be used as an agent of state to champion the cause of development by the government (Mgbejume, 1991). This would also entail working under the full scale control of government. The media differs. To the press, especially private media, its allegiance is first of all to the masses which constitute the audience and without whom the state may be irrelevant.

The role of the journalist in Nigerian media history has been that of a spokesperson for the voiceless majority (Oso, 2003) who not only lacks the word but also the means to be heard. To service these unheard but vested interests on the national grid, it becomes vulnerable to the direct assault by 'men of power' (controllers of state machinery). Abati (1998) writes that "at every moment in Nigerian history, the press has been in the forefront, manning the barricade. The centrality to the issues of the day and lives of the people have brought the Nigerian press much travail."

Okorie (2010), notes that "press freedom has been a core issue for discussion among media professionals and government officials. The issue of press freedom has been prevalent due to its importance in the transparency and governance of nations across the globe." The concept itself has received divergent interpretations. Some schools of thought see it as of a right to be heard by the public, where as others see it as a responsibility to inform. What therefore determines attitude to the subject matter would be dependent on one's leaning.

Taken from a layman's perspective press freedom is the right of the media to operate without fear or let down by the government and its agencies. It is the right of the media to function without the interference of the government. Interference here can come in different forms- as external control, censorship, intimidation, proscription, prosecution (legal and extra judicial) etc.

Supporters of freedom for the press believe that with a free press, the society would get to know about those things governments consider official secrets and therefore hidden from public view. These as events have shown in some African nations are avenues of looting public office. Nigeria provides a clear case scenario; public servants tend to label every piece of information within their purview 'secret' thereby shutting off enquiries pertaining to such documents. Ironically, the information they hoard are the same information journalists' are trained to uncover. The implication is a cataclysmic relationship between the two.

At times, national interest and security have been excused for concealing information from the public. Nnoli (2006, p.1) observes:

In Africa, even the boundless attribution of the African leader to remain in office is projected as national interest. Such a leader is often determined to survive, even at all cost. In such circumstances, the leader's arbitrariness in the exercise of power replaces respect for the nation's laws, values, norms and procedure. Still he justifies his actions in the name of national security. In the name of the same national security, governments have built up enormous official bureaucracy devoted to secrecy, intelligence gathering, including spying, surveillance, repression and behind the scene operation. The influence of this bureaucracy on other aspects of government and the lives of the population has been tremendous. Because of it national security has acquired a cloak and dagger image...

Apart from arbitrariness of power, official secrecy can be havens to perpetuate mindless official corruptions, more so, as the anti graft agencies like The Nigerian Police, Economic and Financial Crimes Commission (EFCC) And Independent Corrupt Practices and other related Offences Commission (ICPC) have been ineffectual in handling graft. The press which has been described as "the last hope of the common man" is therefore looked up to by society for up-to-the-minute account of what goes on in their government. Hence, the clamor for freedom by the press is for them to have unrestricted access to government and public information.

### **Overview of Press Freedom in Nigeria**

A free press is not necessarily a system where provision is made for freedom but one in which there are guarantees or safeguards to prevent abuse. The term freedom is relative to every society. For instance, the nature of the freedom enjoyed by the communist press might be considered repressive by western standards. Nevertheless, every press system enjoys freedom. However, the kind of freedom each enjoys is determined by the nature of the society itself (Ndolo, 2005). If for instance, the society is free; its press will be free. But in a closed system life is methodical and regimented and so is its press. Nigeria operates an admixture of free and closed economies that's why it is almost difficult to say whether the press is free or repressed (Onyike, 2011).

Repression is of two types- legal and illegal repression. The Nigerian press has experienced both. Legal repression comes in form of legislative enactments meant to water down the powers of the media. Illegal repressions are extra judicial and can come in form of censorship, economic and political pressures etc. The fight to liberate the press from legal and political constrictions in Nigeria is a long drawn battle between the press and state forces. On the contrary though, the Nigerian press has also enjoyed a relative level of freedom which is not witnessed under repressive regimes. For instance, Ogbuoshi (2005) explains that "the Nigerian press is repressed under military regimes and free in democracies". This unstable nature of the subject matter must have prompted Dennis (1984, p.63), to quip that "press freedom is one of those noble

expressions that slide easily off our lips but are not always fully committed to our reasoning faculty.” One can easily conclude therefore that although the argument for a free press is upheld by all, no society guarantees absolute freedom to its press.

In Africa as in most of the developing worlds, studies have shown the existence of a range of legal and political pressures which hinder press operations (Okorie, 2010; Okunna, 2003; Ogbuoshi, 2005; Ngwu, Anorue, Makata, & Ekwe, 2014). According to Okorie (2010, p.160), “Nigeria is a typical example of an African country in terms of government control of the press activities and operation in the society. Nevertheless, the press struggles with the government to operate as the watchdog of the populace in making the government accountable to the citizens of the nation.”

Walter Lipperman, cited by Ogbuoshi (2005, p.18) sees press freedom as “an organic necessity”. It is the right to communicate ideas, opinions, experiences, cultures, etc. through the printed word or electronic media (Ona, 2012). It is a press free from government control; one imbued with the right to access information and is able safeguard the secrecy of sources.

Ndolo (2006,p.223), views it as of “the right to help in the enlightenment of every Nigerian by providing him/her with the days intelligence in an open marketplace of ideas without any overt or covert systematic means of applying censorship, pressure or any form of inhibition on the part of Federal and State governments, institutions, organizations and individuals within the country; within the laws of libel, defamation and obscenity.”

### **Press Laws and the Constitutional Role of the Press**

Law is a legal framework for the administration of justice in a society. It exists because humans communicate. The necessity of these laws is for the regulation of human conducts in any society (Okafor, Onyike, Chiaha& Daniel, 2014). As it affects communication, law is made for two purposes – to promote the good of the citizens and to preserve the interest of the nation (Okoro&Okorie, 2004). Ezeugwu, Nnachetam, Chukwu and Ogbu (2000, p.1) define law as “a synthesis of order and justice which serves the purpose of resolving conflicts and protecting interests of human aggregation in an orderly manner thus obviating the need for recourse to self help or other illegal procedure, which may give rise to insecurity and chaos.

As it affects the press, law is put forward for the regulation of press conducts in society in order to avoid the breach of existing privileges and rights of citizens and institutions. That is the kinds of laws that are institutionally determined to ensure a socially responsible operation. On the other hand law is seen as an institutional right of everyone within its jurisdiction for protection. The press, in this case as a body is not left out. However, history has indicated that much as journalists as individual members of the state are protected under the

fundamental rights provision in the Nigerian constitution these rights do not extend to their professional conducts (Onyike, 2011; Okpara, 2014).

Section 22 of the amended 1999 constitution of Nigeria provides that “the press, radio, television, and other agencies of mass media shall at all times be free to uphold the fundamental objectives contained in this chapter and uphold the responsibility and accountability of the government to the people.” (Odunayo, 2012, p.1) explains that, “by virtue of this provision, the constitutional powers and duties or obligation of the press are to help government realize the fundamental objectives and directive principles of state policy as contained in the constitution. The media or the press is also expected to uphold the responsibility and accountability of the government to the people.” A critical look at the clause ‘mass media shall at all times be free to...’ would suggest that the Nigerian press is at full liberty to operate, but, a further insight into section 45 of the same constitution appears to be a derogation of the prior provision. Section 45 provides that nothing in sections 37, 38, 39, 40 and 41 of the Constitution shall invalidate any law that is reasonably justifiable in a democratic society: (a) in the interest of defence, public safety, public order, public morality or public health or; (b) for the purpose of protecting the rights and freedom of other persons. With this, it becomes very difficult for the journalist to operate without the noose of the law hanging over him. Apart from sections in the constitution that veto the powers of the press, other legislations are contributory too. For instance are the Criminal Code and Official Secrets Acts.

Odunayo (2012:2) puts this more succinctly:

These limitations arise from government argument that not all government activities should be made public. The government through the Official Secret Code Act and Criminal Code Act limit the extent in which the press or public officer representing the interest of government could divulge or reveal information received in confidence on the excuse that such matter is classified or confidential.

Not only is it important to see the press as an integral part of the freedom of expression, but, also as part of a system of social control whereby relationships between individuals and social institutions are mediated (Afolayan, 2012, cited in Omagbemi&Tomori, 2016).

Historically and considering freedom of the press from theoretical perspective, the press first functioned as the mouth piece or house organs of the few who directed the opinions of the common people. In English common law, the press belonged to the King. This is called the Authoritarian Theory of the press (Anaeto, Onabajo&Osifeso, 2008). With the demise of monarchy, the press came to adopt a role in search for truth, a kind of free market place for ideas and opinions, devoid of government control. This is the type of press Anaeto, et al.

(2008) called the libertarian theory of the press (Afolayan, 2012, cited in Omagbemi&Tomori, 2016).

The idea behind the free market flow of information is to help find truth (Ndolo, 2005). In other words, truth and falsehood are allowed to trade side by side with the hope that truth at the end will govern over falsehood. The theory discourages all forms of strictures on the media as well as suggests a form of media democracy where opinions can be aired irrespective of one's social standing in the society. Ndolo (2005, p.34) asserts "a central and recurring element is the claim that free and public expression is the best way to arrive at truth and expose error.

Conversely, this system has its short falls too. It encourages the merger of big media houses which can lead to media monopoly. Afolayan (2012) cited in Omagbemi and Tomori,(2016) explains that monopolies not only invite government intrusion, but, it also makes it difficult for the press to be a free market place of ideas. For a well structured media system, the media should be democratized along with the democratization of the society. This would also include putting up measures as a way of social control to ensure a socially responsible and responsive press. Okenwa (2002, p.80) explains further that "how the media are owned, who owns the media and the climate under which the media operate would determine whether the media can operate democratically under a democratic setting." From this background, the media is thus seen as an expression of the society of its operation.

The 15<sup>th</sup> Farm House Dialogue on the media in Democracy (1991), cited in Okenwa (2012, p.80) gave the roles of the media in a democratic society:

- To convey information to the people with a view to letting them know the mandate they gave their representatives is being discharged.
- To provide a forum through which the governed could then react to government policies and activities.
- To provide such analysis as would enable the people to secure an adequate understanding and background to events.
- To assist in the articulation and pursuit of the national interest.
- To help strengthen the economic, social and political fabric of the nation.
- To provide informed criticism and viable alternatives to public policies.
- To monitor the performance of government with a view to preventing deviation from expectedly stated objectives.
- To provide the medium for transmitting knowledge and for educating the populace.
- To function as an agent of modernization.

- To assist in setting an agenda of priorities in the social, cultural, political, and economic development of the nation.

The realization of the above mediating roles of the media is based on the ownership and the extent of freedom the society guarantees the media.

### **Freedom of Information Act: Issues and Challenges**

The Freedom of information legislations is not exclusive to Nigeria alone. Other countries which are signatories to the UN Charter on human rights like Germany, Israel, United Kingdom, Australia, Canada, South Africa, India, Zimbabwe, Ireland, Italy, Sweden and others also have (Ona, 2012; Onyike, 2011). However, just as the systems of government practiced by these countries vary, so are their freedom of information legislations. While some countries like Germany and United States of America gave absolute freedom to government held information, countries like Zimbabwe and others allowed as much freedom as the peculiarities of their political environment can accommodate (Onyike, 2011).

In Nigeria, the Freedom of Information Act was passed into law in 2011 after so many years of debate on it at the floor of the National Assembly. Otherwise known as FOIA (2011) the Act makes public records and information more freely available; provide for public access to public records and information; protect public records and information to the extent consistent with the public interest and the protection of personal privacy; protect serving public officers from adverse consequences for disclosing certain kinds of official information without authorization and establish procedures for the achievement of those purposes.

According to Mike Omeri, the then Director General of National Orientation Agency (NOA) the rationale behind this (FOIA) is to, among others: ensure that there is public participation in governance; the business of governance is open to public scrutiny; laid down procedures in the conduct of public affairs are adhered to; transparency and accountability in governance are institutionalized; corruption is stemmed; and scarce resources are judiciously deployed for the well-being of citizens.

The 32 sections Act was seen as a mile stone achievement for freedom and transparency in governance. This of course is the target of the FOI Act especially sections 1, 4, 5, 7, 20, 25 and 27. As a way of re-awaking fire brand journalism (investigative journalism) in Nigeria, the FOI Act in sections 1(1) and (3) gave the Nigerian citizens, including the media persons (journalists), unrestricted access to information at the disposal of government and its agencies under the following:

Section 1 of the Act reads:

Notwithstanding anything contained in any Act, law or regulation, the right of any person to access or request information, whether or not contained in written form, which is in the custody or possession of any public official, agency or institution however described, is established” Also, the section 1(3) of this Act adds a more strong judicial strength to this section 1(1) and provides that: Any person entitled to the right of information under this Act, shall have the right to institute proceedings in the court to compel any public institution to comply with the provisions of this Act.

However, a closer look at the exemption clauses might indicate a contrast to the rest of the act. Onyike (2011) cited in Onah (2012,p.5) views the exemption clauses as the gift of the devil which is given with the right hand and taken with the other. These Clauses are contained in sections 11, 12, 14, 15, 16, and 17 of the FOI Act. For instance, section 11 (exemption of international affairs and defense) provides in 11(1) that: A public institution may deny an application for any information the disclosure of which may be injurious to the conduct of international affairs and the defence of the Federal Republic of Nigeria. Section 12 (exemption of law enforcement and investigation) also provides in subsection (1): A public institution may deny an application for any information which contains- (a) records compiled by any public institution for administrative enforcement proceedings and by any law enforcement or correctional agency for law enforcement purposes or for internal matters of a public institution, but only to the extent that disclosure would- (i) interfere with pending or actual and reasonably contemplated law enforcement proceedings conducted by any law enforcement or correctional agency, (ii) interfere with pending administrative enforcement proceeding conducted by any public institution, (iii) deprive a person of a fair trial or an impartial hearing, (iv) unavoidably disclose the identity of a confidential source, (v) constitute an invasion of personal privacy under section 15 of this Act, except, where the interest of the public would be better served by having such record being made available, this exemption to disclosure shall not apply and (vi) obstruct an ongoing criminal investigation; and (b) information the disclosure of which could reasonably be expected to be injurious to the security of penal institutions.

Section 14 is captioned ‘exemption of personal information.’ In 14 (1b) the acts provides that personnel files and personal information maintained with respect to employees, appointees or elected officials of any public institution or applicants for such positions. Sec.15 (exemption of third party information) (1) provides that a public institution shall deny an application for information that contains (a) trade secrets and commercial or financial information obtained

from a person or business where such trade secrets or information are proprietary, privileged or confidential, or where disclosure of such trade secrets or information may cause harm to the interests of the third party provided that nothing contained in this subsection shall be construed as preventing a person or business from consenting to disclosure.

Section 17 (exemption of course of research material) provides that: A public institution may deny an application for information which contains course or research materials prepared by faculty members.

A careful study of the provisions of the exemption clauses shows obviously that there is no difference between the extent of freedom given to the press by the constitution and that which the Act permits. All the Decrees and laws made to cage the press were all in pursuant to ensure the secrecy of government information, arm forces and other penal authorities and international relations. And these are the same set of information protected under the 'Official Secrets Act' 'Penal Code' 'Criminal Code' and Protection of Public Officers (Cap, C38LFN, 2004; Cap P3 LFN, 2004; Cap 03 LFN, 2003) and exposure of which landed some media houses into trouble with the government. For instance, Decree No. 4 of 1984 (Public Officers protection against false accusation) under which Tunde Thomson and NdukaIrabor were jailed seems to re-echo in section 12 of the FOI Act. The difference is that the burden of proof lies on the press to establish that the disclosure of such information on all the exempted provisions is in good fate and is as such in the interest of the public. Taken from the face value, it may seem right and just but to the investigative journalist who sees news as a perishable commodity these clauses pose a hindrance and therefore can be assumed to be a denial in the event of the information becoming stale.

The press may be discouraged to go to court because of the cost implications of getting legal representations. A study by Ona (2012) indicates that "Nigerian journalists do not see the FOI Act as a legal document that has the capacity to strengthen investigative journalism in Nigeria." This is because of the exemption clauses which leaves them with no reprieve at all. Onyike (2011) did a critical analysis of the FOIA and came up with the conclusion that the FOIA provides freedom without freedom.

### **The Way Out**

All hope is not lost for the journalist in pursuit of the right of place to operate freely without the long arms of the law hanging over him. The journalists as a body together with other civil liberty organizations should push for the amendment of some of the exemption clauses in the FOI Act to ensure the expansion and liberalization of media access to information.

There should be a judicial interpretation of the FOI Act as it affects sec. 45 of the 1999 (amended) constitution since the constitution of the Federal Republic of

Nigeria is supreme and therefore over rides any other principle operative within its territory.

The United States of America in its first amendment according to James Madison provides that “the United States constitution prohibits the making of any law respecting an establishment of religion, impeding the free exercise of religion, abridging the freedom of speech, infringing on the freedom of the press...” the country can emulate this since Nigeria’s system of government is also emulative of the United States’.

### **Conclusion**

The fight for press freedom in Nigeria is antiquated and there seems to be no end to it. Even with the enactment of the FOI Act in 2011, press men still face intimidations and clampdown on their activities. On the overall however, democracy and by extension freedom of expression in Nigeria is still evolving. It requires time therefore for the society to fully extricate itself from the web of secrecy of public information, and embrace the free press as a critical component of the fight against graft and or as an agent of disclosure.

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